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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROSA ARREAGA-NEGRON, as Executive	:	
Director of the ELECTRICAL INDUSTRY	:	
BOARD OF NASSAU AND SUFFOLK	:	
COUNTIES, NEW YORK, and JOHN DOE	:	<u>COMPLAINT</u>
and JANE DOE, beneficiaries of the TRUST	:	
FUNDS administered by the ELECTRICAL	:	
INDUSTRY BOARD OF NASSAU AND	:	CASE NO.: _____
SUFFOLK COUNTIES, NEW YORK,	:	
Plaintiff,	:	
v.	:	
UNITY ELECTRIC COMPANY,	:	
Defendants.	:	

Plaintiffs Rosa Arreaga-Negron, as Executive Director of the Electrical Industry Board of Nassau and Suffolk Counties, New York, and John and Jane Doe, beneficiaries of the Trust Funds administered by the Electrical Industry Board of Nassau and Suffolk Counties, New York, by and through their attorneys, Becker & Poliakoff, LLP, for their claim against Unity Electric Company (“Unity”), respectfully alleges:

PARTIES

1. Plaintiff Rosa Arreaga-Negron is the Executive Director of the ELECTRICAL INDUSTRY BOARD OF NASSAU AND SUFFOLK COUNTIES, NEW

YORK (the “EIB”) and is a “Fiduciary” within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21).

2. The EIB is an unincorporated association established pursuant to the New York State General Association Law, having its principal office at 372 Vanderbilt Motor Parkway, Hauppauge, New York 11788.

3. JOHN DOE and JANE DOE are beneficiaries of the aforesaid employee benefit plans within the meaning of Section 3(8) of ERISA, 29 U.S.C. § 1002(8).

4. Upon information and belief, Defendant Unity is a corporation organized under and existing by virtue of the laws of the State of New York, and doing business in the State of New York, with its principal place of business for the transaction of business in the State of New York located at 65-45 Fresh Meadow Lane, Flushing, New York 11365.

5. Upon information and belief, Defendant Unity are employers within the meaning of Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

JURISDICTION

6. This is a suit arising under the laws of the Employee Retirement Income Security Act of 1974 (“ERISA”).

7. Jurisdiction is conferred upon this court by virtue of title 28, section 1331 of the United States Code.

CLAIM FOR RELIEF

8. The LONG ISLAND CHAPTER OF THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION (“NECA”) entered into a Collective Bargaining Agreement (the “CBA”) with Local Union No. 25 pursuant to which the EIB was authorized to administer the various benefit funds as set forth and as defined in the CBA.

9. Unity signed an assent agreeing to be bound by the terms of the Agreement.

10. Pursuant to an agreement entitled "Inside Construction Agreement" between Unity, NECA and Local Union No. 25 (the "Agreement") the EIB was authorized and directed to administer the various benefit funds as set forth and as defined in the Agreement.

11. Pursuant to the terms of the aforesaid Agreement, the EIB is contractually obligated to administer certain fiduciary wage and fringe benefit funds (the "Funds") provided for under the terms of the Agreement. Such Funds are identified by the following designations:

Health and Benefit Trust Fund; b) Vacation Holiday Trust Fund; c) Pension Trust Fund; d) Annuity Trust Fund; e) Joint Apprenticeship and Training Trust Fund; f) 401(k) Trust Fund; g) Electrical Industry Board Trust Fund; and h) the National Electrical Benefit Fund. Each of such Funds were created under separate Trust Indentures for the benefit of employees pursuant to Section 302 of the LMRA, 29 U.S.C. §1186, as amended, and other federal statutes.

12. The Health and Benefit Fund, Vacation Holiday Trust Fund, Joint Apprenticeship and Training Fund, Electrical Industry Board Fund are employee welfare benefit plans within the meaning of Section 3(1) of ERISA, 29 U.S.C. § 1002(1), establishing for the purpose of providing medical and other benefits to the employees of contributing employers.

13. The Pension Fund, Annuity Fund and 401(k) Trust Fund and the National Electrical Benefit Fund are employee pension benefit plans within the meaning of Section 3(2) of ERISA, 29 U.S.C. § 1002(2), established for the purpose of providing retirement income to employees.

14. The Funds constitute multi-employer employee benefit plans within the meaning of Section 3(3) and 3(7) of ERISA, 29 U.S.C. § 1002(3) and (37).

15. This action is based upon the failure of Defendant Unity to respond to an audit pursuant to Section 502(c)(1) of ERISA and 29 U.S.C. § 1132(c)(1).

16. On or about 2008, the EIB engaged Schultheis & Panettieri LLP (“S&P”) to conduct periodic audits of the EIB’s financial statements, which included collecting certain information from EIB’s employers.

17. On or around October 1, 2020, S&P commenced an audit of the 4th quarter of the 2020 fiscal year.

18. On or about October 8, 2020 S&P sent Unity a letter requesting certain information necessary to complete the audit, including W2 and payroll records, Federal 941s and NYS-45, employee roster, and bank statements.

19. Unity refused to respond to S&P’s request.

20. From October 8, 2020 through May 26, 2021, S&P contacted the Unity multiple times in an attempt to elicit a response to the audit.

21. On or about June 7, 2021, S&P informed the EIB that Unity had failed to respond to their continued requests for information necessary to complete the audit.

22. On August 12, 2021, counsel for EIB sent Unity a letter again requesting a response to S&P’s audit requests.

23. Unity did not response to the EIB’s request.

24. Unity has failed to respond to multiple requests by S&P and the EIB for documents necessary to complete the audit.

WHEREFORE, plaintiff prays for judgment against Unity Electric Company compelling Unity to comply with the audit, together with legal fees, costs, and interest as provided by law, and for such other and further relief as the court may deem appropriate.

Respectfully submitted,

Dated: February 10, 2022
New York, New York

BECKER & POLIAKOFF LLP
Attorneys for Plaintiff

/s/ James J. Mahon
James J. Mahon